Negotiated Procurements

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Overview

- Definition
- Market Research
- Requirements
- Synopsis
- Competition Requirement
- Solicitation (RFP)
- Evaluation Methodologies
- Cost Analysis
- A & AS Contracts

Negotiated Procurements

FAR Part 15

PROCEDURES THAT INCLUDE:

- Receipt of proposals from offerors
- Permits bargaining
- Usually affords offerors an opportunity to revise proposals

Negotiation v. Sealed Bidding

FAR Part 15

NEGOTIATION:

- *Award based on evaluation factors*
- *Significant Gov't Discretion in Award*
- *Requirements not well defined*
- *Proposal Confidentiality*

FAR Part 14

SEALED BIDDING

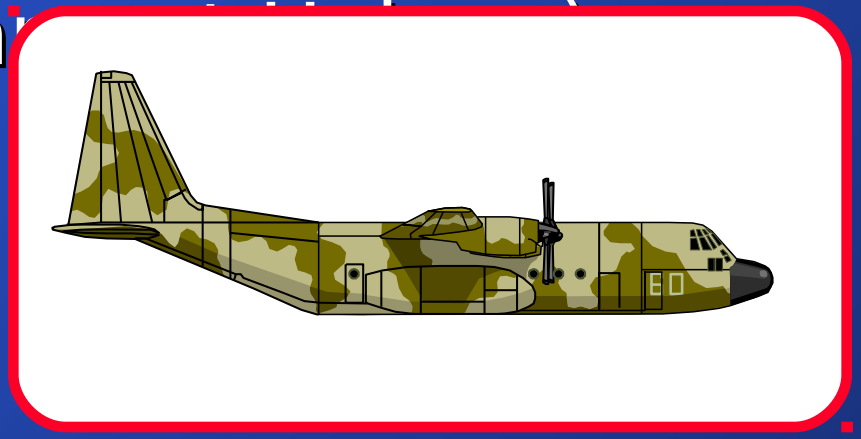
- *Award based on lowest price*
- *Minimal Gov't Discretion in Award*
- *Requirements well defined*
- *Public Bid Opening*

Negotiated Procurements

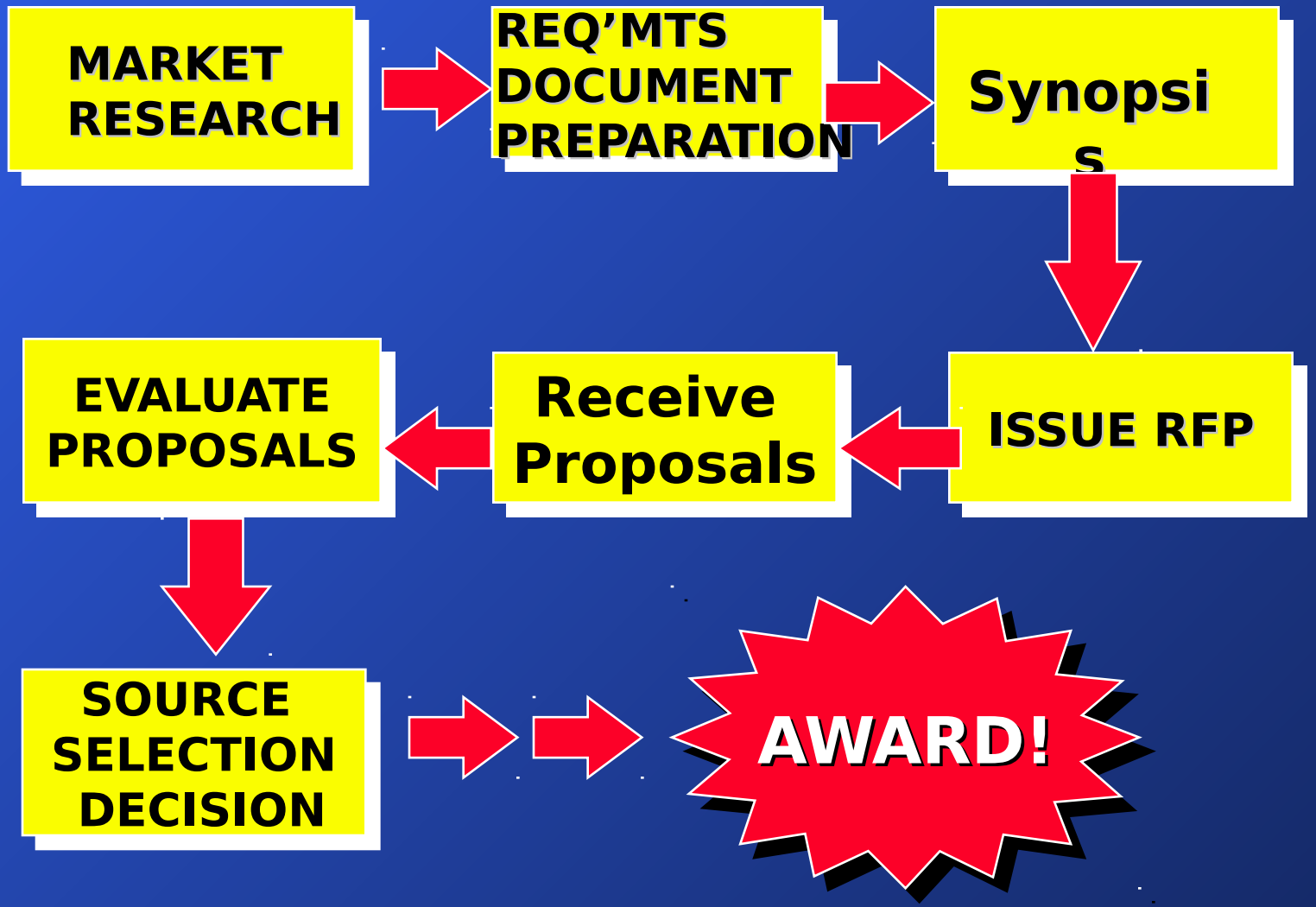
- COMMERCIAL ITEMS (FAR Part 12)

- NONCOMMERCIAL ITEMS (FAR Part 15)

(Govern



Competitive Negotiation Process



Presolicitation Activities

Market Research

FAR Part 10

Conducted to Determine:

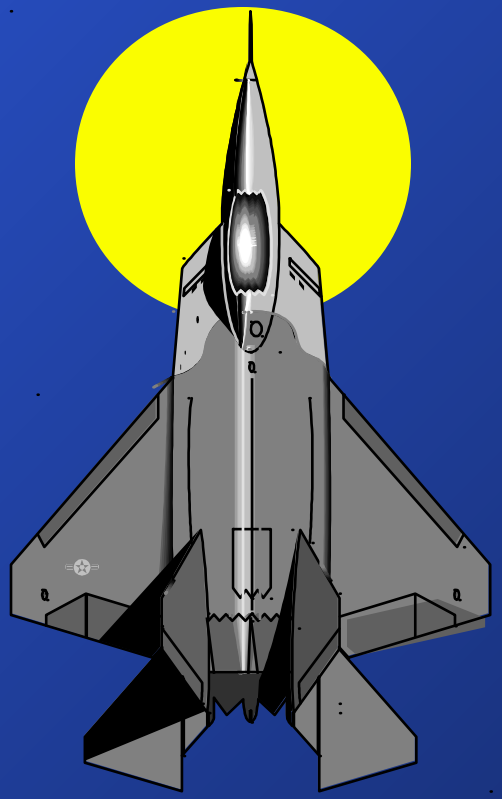
- If sources are capable to satisfy Government requirements
- Determine availability of Commercial Items/ NDI that meet government needs
- Obtain Information on Commercial Item industry practices

Requirements Document

FAR Part 11

- Facilitate the use of Commercial Items
- Provide Incentives for Innovative Contracting Practices
- Maximize use of Performance Specifications
- Waivers required to Use MIL SPECs/STDs
- Convert or delete existing management and manufacturing requirements

Requirements Document



- State Requirements in terms of:
  - Functions to be performed
  - Performance required -- or
  - Essential physical characteristics

Performance Based Service Contracting

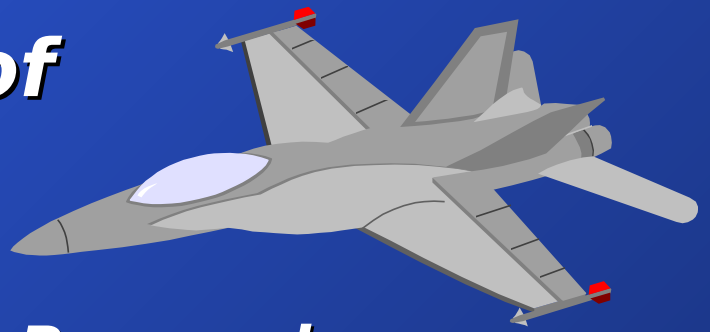
- New provisions in FAR Part 37.6
- “Best practices” techniques prescribed to motivate superior contractor performance
- Use of positive and negative performance incentives

Competition Requirements

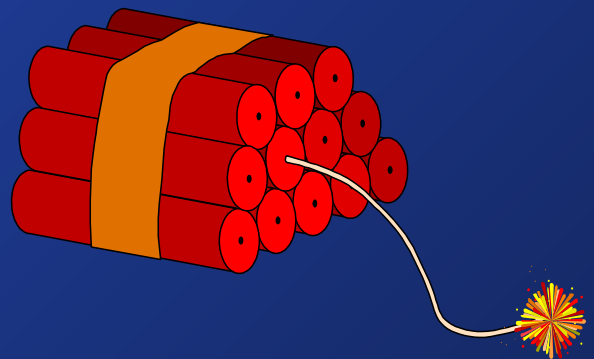
- **Competition in Contracting Act** (CICA) FAR Part 6
  - Full and Open Competition required, unless an exemption applies
  - Exemptions must be documented in a Justification and Approval (J & A) document
  - Class J & A's authorized for certain types of related contract actions

CICA Exemptions

- ***Limited Number of Sources***
  - ***Weapons Systems***
  - ***Unsolicited Research Proposals***



- ***Unusual or Compelling Urgency***
  - ***Maximum practicable competition***
  - ***Lack of Advance Planning- NOT Compelling***



CICA Exemptions

- ***Industrial Mobilization/ Engineering/R&D/Expert Services***
  - **Maintain a facility, producer, manufacturer in a national emergency or to achieve industrial mobilization**
  - **Establish or maintain essential engineering, research, or development capability for an educational, nonprofit, or federally funded R & D center**
  - **Acquire expert services for any current or anticipated litigation or dispute**
- ***International Agreement (IACR)***

CICA Exemptions

- ***Authorized or Required by Statute***
  - *Disaster Relief & Emergency Assistance*
  - *Federal Prison Industries procurements*
  - *Qualified nonprofit agencies for the blind or severely handicapped*
  - *8a Award*
- ***National Security***
- ***Public Interest***

Bundling Of Contract Requirements

- Combination of multiple requirements into one contract
- May be construed as a violation of CICA, unless:
  - Comply with Pub. L. 105-135/ FAR 7.107
  - Document bundling is necessary to meet government's minimum needs

  (Administrative Convenience - insufficient justification)

Synopsis Requirement

- Commerce Business Daily (CBD) > $25,000
  - Increase competition & small business opportunities
- Proposed Contract Action
  - 15 days before issuance of solicitation
  - 30 day response period
  - Exceptions
- Contract Award

SOLICITATION / Request for Proposal (RFP)

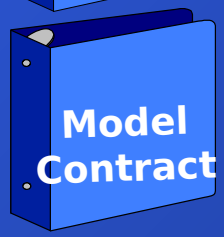
Source Selection Process

Statement of Objectives

Work Breakdown Structure

Instructions

Selection Criteria



Model Contract

Contractor Work Breakdown Structure

IMP & IMS

Int Mgmt & Tech Prop

Contract

- Integrated Mission Support Area
  - Affordability
  - System Engineering
  - System Implementation
  - Management
- Cost Area

Selection Based on Contractor's Ability to Define a Viable Program

STATEMENT OF OBJECTIVES

SOO Concept

Product

Identifies top program stake-holder objectives

Concise, limited in size best solution response by offeror

Derived from program requirements and integrated

Process

Brings together the

Allows for flexible /

Focuses attention

Uniform Contract Format

- Part I - The schedule (Sections A-H)
- Part II - Contract Clauses (Section I)
- Part III - List of Documents, Exhibits, and Other Attachments (Section J)
- Part IV - Representations and Instructions (Section K-M)

The Schedule

- **Section A** -- Cover Sheet
  - SF 33 or SF 1447
  - information
- **Section B** -- Schedule
  - CLINS
  - Unit Prices/ Quantities
- **Section C -- Requirement**
- **Section D** -- Packing & Marking
- **Section E** -- Inspection & Acceptance
- **Section F** -- Deliveries or Performance
- **Section G** -- Administrative Data
- **Section H** -- Special Contract Requirements
  - Tailoring of Provisions
  - Review for inappropriate or misplaced clauses

Uniform Contract Format

- **Section I** -- Standard FAR Clauses
  - Check FAR Matrix for most recent edition
  - Match with contract type
- **Section J** -- Attachments, exhibits, and other documents
- **Section K** -- Reps & Certs
- **Section L** -- Instructions and Conditions
  - Instructions to Offerors on Proposal Preparation
  - Must parallel Section M provisions

Uniform Contract Format

- ***Section M***
  - Evaluation Factors for Award
  - Must evaluate based on most important aspects of procurement
  - FAR Evaluation Factors
    - Cost/Price
    - Quality
    - Past Performance

Must disclose relative weight of Evaluation Factors

Evaluation Methodologies -- Section M

BEST VALUE CONTINUUM

FAR Subpart 15.1

Proposal Analysis

- **FAR 15.404**
- Price must be a factor in each procurement. CO must evaluate for:
  - Reasonableness of price or cost
  - Offeror's understanding of work and its ability to perform the contract
- *Cost Analysis vs. price analysis*

Cost Realism Analysis

- Review and Evaluation of each offeror's proposed cost estimate to determine if realistic for work to be performed
- Used when:
  - Requirements may not be fully understood by offerors
  - Concerns exist regarding quality or service shortfalls

Act (TINA)

- 10 U.S.C. 2306a
- Requires prime contractors, subcontractors, and offerors to submit “cost or pricing data” to the government prior to entering certain contracts, subcontracts, and modifications -- and CERTIFY the cost and pricing data submitted were accurate, current, and complete
- Current Dollar Threshold: $500,000
- Defective Pricing Action

Cost or Pricing Data

FAR 15.401

All facts that, as of the date of price agreement, or another agreed upon date, prudent buyers and sellers would reasonably expect to affect price negotiations significantly

TINA Exemptions

FAR 15.403-1

The CO SHALL NOT require cost or pricing data *IF*:

- Adequate Price Competition
- Prices Set by Law or Regulation
- Commercial Items
- Exceptional Cases

Cost or Pricing Data Not Required…

- Exercise of a priced option
- Execution of Overrun Funding or Interim Price Adjustment Modification

"Information Other Than Cost or Pricing Data:"
Not required to be certified under TINA, but necessar
to determine price or cost realism

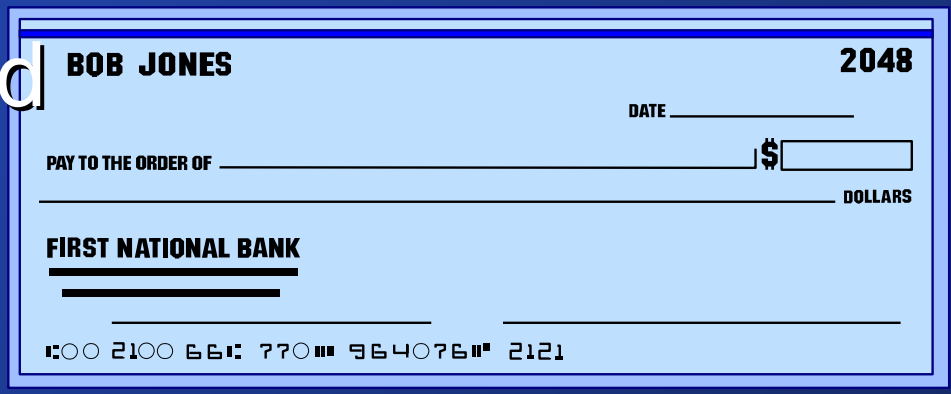
Price Negotiation Documentation

- FAR 15.406-3
- Price Negotiation Memo AFFARS 5315.406-7
- Purpose
  - Record of Price Negotiations
  - Documents Basis for Fair and Reasonable Price
  - Reliance, if any, on C or P data

Contract Financing

FAR Part 32

- Advance Payments
- Loan Guarantees
- Progress Payments
- Performance-Based Payments



Advisory and Assistance Services (A&AS)

- CAAS Includes:
  - **Management and Professional Support**
  - **Studies, Analyses, and Evaluations**
  - **Engineering and Technical**

FAR 37.2

- CAAS does not Include:
  - **Routine ADP and telecommunication services**
  - **A & E Services**
  - **Research on basic math, medical, biological, physical, psychological, social, etc.**

A&AS Requirements

- No award for “Inherently Governmental Functions” (FAR Subpart 7.5)
- CO must determine that insufficient government resources exist
- Special restrictions on Initial Contract Award Proposal Evaluation and Analysis (ICAPEA) Contracts

A&AS Requirements

- 5 Year Limit
- Multiple Awards Required IF -- Contract over 3 Yrs & $10M (unless a written Determination is executed)
- Scope, Period and Max Value of Contract must be stated in RFP

BREAK TIME

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